



OFFICE OF THE CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

June 24, 2009

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The Honorable Russell Feingold
United States Senator
517 East Wisconsin Avenue
Room 408
Milwaukee, WI 53202

Attention:

Dear Senator Feingold:

I am responding to your inquiry dated June 1, 2009, on behalf of your constituent, . He asked whether he qualifies for the first-time homebuyer credit for the 2009 purchase of a home. Pursuant to separation proceedings, a court ordered him to vacate the family home more than three years ago. His divorce became final in 2009.

A refundable credit is available to a first-time homebuyer of a principal residence (section 36(a) of the Internal Revenue Code (the Code)). A first-time homebuyer is any individual who has not had an ownership interest in a principal residence (as defined in section 121 of the Code) at any time during the three-year period before the date of purchase of the new home (section 36(c) of the Code).

For purposes of the first-time homebuyer credit, the family home was principal residence until his divorce became final in 2009. Because had an ownership interest in a principal residence until 2009, which is within three years of the date he intends to purchase a new home, he will not qualify for the first-time homebuyer credit.

I hope this information is helpful. If you have any questions, please contact me or
at .

Sincerely,

Michael J. Montemurro
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)